

NEBRASKA ADMINISTRATIVE CODE

Title 68 - DEPARTMENT OF CORRECTIONAL SERVICES

Chapter 5 - CODE OF OFFENSES

001 Applicability. The provisions of this rule shall apply to all facilities operated by the Department of Correctional Services.

002 Departmental Policy. All inmates who are housed within a facility under the Department's supervision, or who under any circumstances are in the custody of or under the supervision of the Department shall be subject to the provisions of the Code of Offenses. Any breach of the Code of Offenses may result in appropriate disciplinary action. No conduct of an inmate constitutes an offense unless it is defined as such in the Code of Offenses.

003 Notice of Offense. It shall be the duty of the Chief Executive Officer of the facility to familiarize each inmate with the Code of Offenses either through the orientation process or by the distribution of printed manuals or rule books among the population. The members of the facility population shall be kept informed of any changes in the Code by prominent posting of written orders, memoranda or directives. Newly admitted inmates will be informed of the Code of Offenses during orientation.

004 Standard of Proof Required. An inmate commits an offense only when he or she engages in conduct which fulfills all the necessary elements of the offense. The conduct must be voluntary and be intentional or reckless or grossly negligent. The accused must have had notice that the conduct was proscribed by the Code of Offenses or applicable statutes.

004.01 An inmate may be charged as a principal and be subject to appropriate disciplinary sanctions if it is clearly determined that he or she knowingly commanded, induced, procured or aided another person in the commission of the offense. No inmate is liable under this section for the conduct of another person if prior to the commission of the offense, the inmate withdrew from participation in the offense and made a reasonable effort to prevent its commission. In any disciplinary hearing where the liability of the accused inmate is based upon the conduct of another person, it will be no defense that the other person has been found free of guilt, has been determined guilty of a different offense, has been discharged from employment, or has been otherwise restricted from access to the facility.

004.02 An inmate may be found guilty of attempting to commit an offense if: (1) Acting with the kind of culpability required for commission of such offense, the inmate engages in conduct which in fact constitutes all of the acts necessary for the commission of the offense except its completion; (2) The inmate willfully provides substantial and knowing assistance to a person attempting to commit an offense under the Code of Offenses; or (3) The inmate agrees with one or more persons to engage in or cause the performance of such conduct. An inmate found guilty of an attempt shall be subject to the same penalties which correspond to the offense attempted.

004.03 If contraband is found in a living unit shared by more than one inmate, there shall be a presumption that each of those inmates has knowledge of the presence of the contraband. Each inmate charged as a result of the discovery of such contraband shall have the burden of coming forward with evidence to rebut the presumption.

005 Offenses. For the purpose of the Code of Offenses, the following is a list of violations which shall be classified as offenses. Several of the offenses listed may also be considered criminal offenses and consequently shall be subject to state or federal jurisdiction, in addition to the appropriate penalties levied under Rule 6. In this event, the matter may be referred to appropriate law enforcement officials for consideration for prosecution. An offender may be found guilty of committing an offense, attempting to commit an offense, or aiding and abetting in the commission of an offense.

I [A] Murder/Manslaughter. The killing of another person.

I [B] Mutinous Actions. Mutiny, inciting to riot, insurrection, taking of hostages, and/or arson in any part of the institution, or any work assignment, or within the extended limits of the facility.

I [C] Aggravated Assault/Assault/Fighting. Assault on another person which causes pain or bodily injury, threatened assault, fighting with another person resulting in serious bodily injury, spitting or throwing bodily waste or fluids on another person, or sexual assault.

I [D] Possession or Manufacture of Weapons. Possession or manufacture of any weapon or article to be used as a weapon.

I [E] Escape. Unauthorized departure from any part of the facility, departure from any work assignment or any extended limits of a facility with the intention to remain away; failure to return from a pass or furlough with the intent to remain away.

I [F] Work Stoppage/Work Strike Encouraging other inmates to refuse to work or participate in designated programs, or preventing other inmates from working, or participating in designated programs.

I [G] Refusal to Submit to a Search. Refusal to submit to a search of person, clothing, property, or living quarters when ordered by authorized personnel; flight to avoid search; or interference with such a search.

I [H] Drug or Intoxicant Abuse. Use, possession, manufacture, or sale of drugs, narcotics, or medication not prescribed by facility personnel, or of intoxicants or inhalants; being under the

influence of any intoxicant, drug, narcotic, inhalant, or medication not prescribed by facility personnel, or refusal to submit to a breath, blood, or urine test upon instruction from authorized personnel. Tampering with test procedures, contaminating the evidence, or intentionally invalidating the urinalysis in any manner. Failure to submit a urine specimen for testing within five hours is a refusal.

I [I] Escape Paraphernalia. Possession, manufacture, or use of escape paraphernalia.

I [J] Destruction of Property Over \$500. Destruction, alteration, unauthorized use, or wasting of property valued over \$500 which belongs to the State or another person; or unauthorized contact or interference with such property.

I [K] Demanding Payment for Protection. Demanding or receiving anything from another person in exchange for protecting another person from the inmate population; demanding or receiving anything in exchange for not informing on another person, or threatening to inform on another person.

I [L] Abuse of Judicial Process. Filing a legal action or motion determined in a judicial proceeding to be false, frivolous, malicious, or made in bad faith or for purposes of delay or harassment.

I [M] Failure to Comply with Personalized Plan. Intentional failure to comply with the department-approved personalized program plan.

I [N] Violation of Passes or Furloughs. Failure to return to a Community Facility within the time prescribed, or going anywhere while on pass or furlough without authorization. Failure to remain within the extended limits of confinement, or unauthorized absence from an approved location.

II [A] Bribery. Offering to sell, give, or loan any item or to perform any service for the benefit of any person in exchange for that person's deviation from assigned authorized duties or institutional rules.

II [B] Drug Paraphernalia. Possession, or manufacture of needles, syringes, or any other drug or narcotic paraphernalia.

II [C] Sexual Activities. Engaging in or pressuring others to engage in sexual activities, or intentional exposure of the sexual organs to another person in a location or manner where such exposure has no legitimate purpose.

II [D] Destruction of Property Valued Between \$100 and \$500. Destruction, alteration, unauthorized use, or wasting of property valued between \$100 and \$500 which belongs to the State or another person; or unauthorized contact or interference with such property.

II [E] Disobeying a Direct Order. Disobeying any direct verbal or written order from any employee, or refusing immediately to comply with such a direct order.

II [F] Forgery/Possession of Forged Documents. Knowingly possessing a falsified or altered paper or document. Signing another inmate's name or number, or altering or falsifying a document with the intent to deceive or defraud.

II [G] Theft. Taking of property from another person or from the State with the intent to deprive the owner of the property's use; or the unauthorized possession of stolen property.

II [H] Use of Threatening Language or Gestures/Fighting. Use of language or gestures thereby threatening physical harm to another person; or fighting which results in more than physical contact but less than serious bodily injury.

II [I] Gambling or Promoting Gambling. Promoting gambling; or possessing gambling devices or records; or betting on the outcome of a future event such as a game of skill or chance.

II [J] Unauthorized Areas. Being in or reporting to any area without proper authorization; loitering; or failure to report to a work assignment, program assignment, or other designated area without permission.

II [K] Improper Handling of Funds. Failure to turn over all incoming monies to the Department's accountant or designee for processing; the cashing of payroll checks; the diversion of incoming monies; or the making of unauthorized deductions from payroll checks.

II [L] Improper Use of Transportation. Operation of a motor vehicle without authorization from the Department authorities; the operation of a company-owned, job-related vehicle for any purpose other than work; or transportation in any vehicle without prior authority from Department administrators.

II [M] Law Violations. Violation of any law, statute, or ordinance of any city, county, state, or federal government; or failure to promptly notify Department authorities of any contact with law enforcement officials.

II [N] Failure to Work. Failure to work as directed by a staff member or agent of the State.

II [O] Medication Abuse. Use or possession of authorized medication contrary to prescription, possession of expired medication, or unauthorized possession of non-prescription medication.

II [P] Mutilation of Self or Others. Intentionally piercing, branding, or cutting any portion of one's body or another's body or causing injury to one's self.

II [Q] Tattoo Activities. Performing tattoo services, maintaining tattoo paraphernalia, or receiving a tattoo.

II [R] Gang/Threat Group Activity. Gang/threat group activity such as flashing gang signs, identified modes of dress, wearing gang colors, logos and drawing/marketing gang "cryptic" signs and symbols.

II [S] False Reporting. Giving false information to authorized state personnel, falsely implicating an inmate, planting evidence/contraband, diverting attention of staff, turning in a false alarm, concealing one's identity.

III [A] Flare of Tempers/Minor Physical Contact. Flare of tempers by inmates; minor physical contact where contact is offensive, disruptive, or inappropriate.

III [B] Destruction of Property Under \$100. Destruction, alteration, unauthorized use, or wasting of property valued under \$100 which belongs to the State or another person; or unauthorized contact or interference with such property.

III [C] Possessing or Receiving Unauthorized Articles. Possessing or receiving unauthorized articles from another person without the approval of the Chief Executive Officer. Any item which is altered or which has not been issued to an inmate, purchased by him/her through proper institutional channels, or otherwise specifically approved for his/her possession by the facility administration is an unauthorized article

III [D] Swearing, Cursing, or Use of Abusive Language or Gestures. Swearing, cursing, or using

abusive gestures or language directed at another person; words, actions, or other behavior intended to harass, demean, or cause alarm in an employee.

III [E] Tobacco Products. Smoking or use of tobacco products inside any state building or vehicle; possession of lighters, tobacco, or other smoking materials contrary to DCS regulations

III [F] Selling, Loaning, or Giving Items to Others. Selling, giving, or loaning anything or accepting anything from another person without the prior approval of the Chief Executive Officer.

III [G] Violation of Sanctions. Violation of restrictions or sanctions as imposed by a Disciplinary Committee.

III [H] Violation of Any Signed Program Agreement. Violation of any term or condition of any signed program agreement.

III [I] Possession of Official Government Money Without Authorization. Possession of official government money without authorization, or in excess of the amount authorized by the Chief Executive Officer.

III [J] Sanitation. Failure to maintain proper sanitation in a living area or work assignment area.

III [K] Disruption. Disrupting duties of staff or inmates, creating a disturbance, causing a delay, delaying count, tampering with locks, littering, creating excessive noise by any means, creating or maintaining a health, safety or fire hazard.

III [L] Conduct with a Visitor in Violation of Regulations. Conduct with a visitor in violation of visiting regulations which have been posted or otherwise published to the inmate population; unauthorized contact with persons on or near the security barriers.

III [M] Violation of Mail or Telephone Regulations. Violation of procedures set out in Rule 3, or any institutional regulations governing use of the mails and telephone which have been posted or otherwise published to the inmate population. Using or possessing another inmate's PIN number, participating in custom calling services including a three-way call, conference call, call forwarding; giving out an assigned PIN number to another inmate; or providing false information on an ICS form.

III [N] Violation of Regulations. Failure to adhere to any written or posted order or regulation.

General Statutory Authority: Neb. Rev. Stat. §§83-173 and 83-4, 109, 83-4, 111 through 83-4, 122.

Wolff v. McDonnell, 418 U.S. 539 (1974).